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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:)	Case No. 06-22225-D-7
BETSEY WARREN LEBBOS,)	
)	
Debtor.)	
<hr/>		
LINDA SCHUETTE,)	
)	Adv. Pro. No. 11-2386-D
Plaintiff,)	
)	Docket Control No. JG-3
v.)	
JOSEPH GIOVANAZZI as trustee,)	DATE: August 31, 2011
)	TIME: 10:00 a.m.
Defendant.)	DEPT: D

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or Issue preclusion.

MEMORANDUM DECISION

Defendant Joseph Giovanazzi, as trustee of the Aida Madeleine Lebbos No. 2 Trust and of the Aida Madeline Lebbos Trust II ("Giovanazzi"), has moved for dismissal of this adversary proceeding. Plaintiff Linda Schuette, chapter 7¹ trustee in the parent case in which this adversary proceeding is pending (the "trustee"), opposes the motion. For the reasons set forth below, the court will deny the motion.

1. Unless otherwise indicated, all Code, chapter, and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All Rule references are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037.

1 I. BACKGROUND

2 A. Adversary No. 07-2006

3 On January 3, 2007, the plaintiff filed a complaint seeking
4 to set aside alleged fraudulent transfers of a condominium in
5 Long Beach, California (the "condo" or the "property"), to
6 recover property and/or monetary damages, for turnover of
7 property, and for declaratory relief, Adv. No. 07-2006. The
8 defendants were the debtor in the underlying chapter 7 case,
9 Betsey Warren Lebbos, individually and as a trustee of the Aida
10 Madeleine Lebbos No. 2 Trust and as a trustee of the Aida
11 Madeline Lebbos Trust II ("Lebbos"), and Jason Gold and Thomas
12 Carter, as co-trustees of the Aida Madeleine Lebbos No. 2 Trust
13 and as co-trustees of the Aida Madeline Lebbos Trust II ("Gold"
14 and "Carter").²

15 On February 5, 2007, Lebbos filed motions to dismiss the
16 proceeding and to transfer the venue of the proceeding to the
17 Central District of California, and on February 28, 2007, Lebbos
18 filed a request to disqualify the undersigned as the judge in the
19 proceeding. Those motions were denied. On August 17, 2007, Gold
20 and Carter filed motions to dismiss and to transfer venue and a
21 request to disqualify the undersigned, and Lebbos filed second
22 motions to dismiss and to transfer venue. On September 6, 2007,

23
24 2. During the long history of Lebbos' chapter 7 case, the
25 parties have used both of these names for the trust. Lebbos, for
26 example, filed an answer in Adv. No. 07-2006 in which she
27 referred to the Aida Madeline Lebbos Trust No. II as non-
28 existent, yet the grant deed by which she purported to convey the
property to Gold and Carter, as trustees, refers solely to the
Aida Madeline Lebbos Trust II. The parties have not raised this
discrepancy as an issue; for ease of reference here, the court
will refer to the "Trust."

1 Lebbos filed a second request for disqualification. The motions
2 were denied. At least two appeals were taken by each of the
3 defendants.

4 On November 28, 2007, Schuette filed motions against all
5 three defendants for orders imposing sanctions against them,
6 including striking their answers and entering their defaults for
7 failure to appear at depositions and failure to produce
8 documents. All three defendants opposed the motions. On
9 February 13, 20, and 21, 2008, the court issued lengthy
10 memorandum decisions explaining its reasons for granting the
11 motions as to each defendant. On February 22, 2008, Lebbos filed
12 a notice of appeal, and on March 3, 2008, Gold and Carter
13 appealed. Lebbos and Gold filed motions for a stay pending
14 appeal and Carter filed a joinder to Gold's motion. The motions
15 were denied.

16 On March 11, 2008, the trustee filed an application, based
17 on the order entering their defaults, for a default judgment
18 against all three defendants. On March 26, 2008, Lebbos filed a
19 third request for disqualification of the undersigned, along with
20 opposition to the application for default judgment, and the same
21 day, Gold and Carter filed joinders in Lebbos' opposition.

22 Hearing on the trustee's application was scheduled for April
23 9, 2008, and was continued by the court to April 15, 2008. At
24 the request of attorney John Read, who had by then made several
25 special appearances on behalf of Lebbos in the chapter 7 case and
26 the various adversary proceedings, the court continued the
27 hearing to April 17, 2008. A hearing was held that day, at which
28 Gold appeared and attorney John Read made a special appearance

1 for Lebbos. The same day, this court issued findings of fact and
2 conclusions of law on the plaintiff's application for default
3 judgment against all the defendants, along with a judgment
4 against all of them (the "Judgment"), further described below.

5 Three days earlier, on April 14, 2008, Gold and Carter,
6 having by that time participated heavily in the adversary
7 proceeding, including seeking to have it dismissed, to have the
8 venue changed, and to have this judge disqualified; having
9 appealed the decisions against them; having thrown up unrelenting
10 roadblocks to the trustee's discovery efforts; knowing full well
11 that their defaults had been entered over their objections; and
12 knowing full well of the hearing on the trustee's motion for
13 default judgment -- at that time, scheduled for the very next
14 day, signed and caused to be recorded a quitclaim deed purporting
15 to transfer the condo to Giovanazzi, as trustee of the Aida
16 Madeline Lebbos Trust II (the "Quitclaim Deed"). The Quitclaim
17 Deed reflects a documentary transfer tax of \$0.

18 On August 13, 2008, Giovanazzi, as trustor, signed a deed of
19 trust purporting to encumber the condo in favor of Aida Madeleine
20 Lebbos, Cameron Dacquila, and Brandon Dacquila, to secure an
21 obligation of \$750,000 (the "Deed of Trust"). The beneficiaries
22 are, respectively, Lebbos' daughter and grandchildren. (The same
23 individuals are also, apparently, the beneficiaries of the
24 Trust.) The Deed of Trust was recorded on September 19, 2008.
25 On August 27, 2008, Giovanazzi filed an unlawful detainer action
26 claiming to be the owner of the property and seeking possession
27 (the "Unlawful Detainer Action").

28 As pertinent to this motion, the Judgment determined that:

1 • The transfer of the condo from Lebbos, an unmarried woman,
2 to Lebbos as trustee of the Trust, on or about August 19, 2004,
3 is set aside and avoided and is of no force or effect;

4 • The transfer of the condo from Lebbos as trustee of the
5 Trust to Gold and Carter as trustees of the Trust, on or about
6 May 25, 2005, is set aside and avoided and is of no force or
7 effect;

8 • Recovery of all right, title, and interest in and to the
9 condo held by Lebbos, Gold, and Carter, in any capacity, is
10 awarded to the trustee, and the interest of the trustee in the
11 condo is superior to any interest of Lebbos, Gold, and Carter,
12 and each of them, in the condo.

13 The Judgment also granted immediate access to, control over,
14 and possession of the condo to the trustee, and permanently
15 enjoined Lebbos, Gold, and Carter from conveying, transferring,
16 encumbering, or otherwise affecting the title to or encumbrances
17 on the condo. As seen above, three days earlier, unknown to the
18 trustee, Gold and Carter had signed and recorded the Quitclaim
19 Deed in favor of Giovanazzi.

20 B. Prior Role of Giovanazzi

21 At the time he was named on the Quitclaim Deed, Giovanazzi
22 was no stranger to Lebbos' bankruptcy case. On January 2, 2008,
23 he had filed two declarations in the case -- one in support of
24 Lebbos' motion to terminate the services of the chapter 7
25 trustee, the other objecting to the trustee's settlement of a
26 federal district court action brought by Lebbos in 2002.
27 Giovanazzi testified he was the attorney of record for Lebbos in
28 a \$5 to \$20 million lawsuit then pending in the Los Angeles

1 County Superior Court in which Lebbos was suing some former
2 attorneys of hers for fraud; he referred to overwhelming evidence
3 of fraud on the part of those attorneys; he accused the trustee
4 and her attorney of fraud and deceit because they had compromised
5 the claims asserted in that lawsuit (claims that were clearly
6 property of the bankruptcy estate); and he stated he had advised
7 the Los Angeles County Superior Court judge that he might be
8 requesting the court to issue or approve arrest warrants for the
9 trustee and her attorney.

10 C. The Complaint in this Adversary Proceeding

11 In the first and third causes of action of this new
12 adversary proceeding, which are the subject of this motion, the
13 trustee alleges that:

14 • The legal effect of the Judgment is that the two avoided
15 transfers of title are preserved for the benefit of the estate
16 under § 551;

17 • The transfer evidenced by the Quitclaim Deed is of no
18 force and effect as to the estate and the trustee's interest in
19 the condo; it is void and a nullity and does not grant or create
20 any interest in the condo in favor of Giovanazzi;

21 • The transfer evidenced by the Deed of Trust is of no force
22 and effect as to the estate and the trustee's interest in the
23 condo; it is void and a nullity and does not grant or create any
24 interest in the condo in favor of Giovanazzi, Aida Madeleine
25 Lebbos, Cameron Dacquila, or Brandon Dacquila;

26 • The Unlawful Detainer Action is of no force and effect as
27 to the estate and the trustee's interest in the condo; it is void
28 and a nullity, and does not grant, create, establish, or

1 recognize any interest in the condo in favor of Giovanazzi.

2 II. ANALYSIS

3 This court has jurisdiction over the motion pursuant to 28
4 U.S.C. §§ 1334 and 157(b)(1). The Motion is a core proceeding
5 under 28 U.S.C. § 157 (b)(2)(A), (E), (H) & (O). The Motion was
6 brought pursuant to Fed. R. Civ. P. 12(b)(6), incorporated here
7 by Fed. R. Bank. P. 7012(b).

8 A. Standards for Dismissal under Rule 12(b)(6)

9 The United States Supreme Court has recently adopted a
10 "plausibility" standard for assessing Rule 12(b)(6) motions,
11 analyzing the complaint before it in terms of whether it
12 contained enough factual allegations, taken as true, to plausibly
13 suggest that the plaintiff was entitled to relief. Bell Atl.
14 Corp. v. Twombly, 127 S. Ct. 1955, 1965, 167 L. Ed. 2d 929, 945
15 (2007). "[W]e do not require heightened fact pleading of
16 specifics, but only enough facts to state a claim to relief that
17 is plausible on its face." 127 S. Ct. at 1974.

18 The Court did not disturb its earlier pronouncement in
19 Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683 (1974), that on a
20 motion to dismiss, "[t]he issue is not whether a plaintiff will
21 ultimately prevail but whether the claimant is entitled to offer
22 evidence to support the claims." 416 U.S. at 236. Thus, "a
23 well-pleaded complaint may proceed even if it appears 'that a
24 recovery is very remote and unlikely.'" Bell Atl. Corp., 127 S.
25 Ct. at 1965, quoting and characterizing Scheuer v. Rhodes, 416
26 U.S. at 236.

27 B. Giovanazzi's Declaration

28 In ruling on a motion to dismiss pursuant to Rule 12(b)(6),

1 the court "may generally consider only allegations contained in
2 the pleadings, exhibits attached to the complaint, and matters
3 properly subject to judicial notice." Outdoor Media Group, Inc.
4 v. City of Beaumont, 506 F.3d 895, 899 (9th Cir. 2007), citation
5 omitted. Under the "incorporation by reference" doctrine, a
6 court may also review documents "whose contents are alleged in a
7 complaint and whose authenticity no party questions, but which
8 are not physically attached to the [plaintiff's] pleading."
9 Knievel v. ESPN, 393 F.3d 1068, 1076 (9th Cir. 2005), citation
10 omitted.

11 Giovanazzi's declaration in support of the motion does not
12 fall with the "incorporation by reference" doctrine; thus, the
13 court will not consider it. Further, the declaration consists of
14 (1) legal conclusions, and (2) allegations regarding the history
15 of the Trust, regarding the history of Lebbos' bankruptcy case,
16 and regarding the ownership of the condo as to which Giovanazzi
17 demonstrates no personal knowledge. For these reasons also, the
18 court will not consider the declaration.³

19 C. The Statute of Limitations

20 Giovanazzi contends, first, that the trustee's complaint is
21 barred by the one-year statute of limitations of § 550(f) because
22 it was not filed within one year after entry of the Judgment.⁴
23

24 3. Giovanazzi's points and authorities reiterate many of
25 these inadmissible factual allegations and legal conclusions
26 concerning, especially, ownership of the condo and monies
27 allegedly paid for it by the Trust. As with the declaration,
28 these allegations in the points and authorities will be given no
weight.

4. Section 550(a) provides that to the extent a transfer is
(continued...)

1 The trustee argues in response that she is not seeking any remedy
2 under § 550, but only under § 551, which provides that a transfer
3 avoided under, for example, § 548 (as in this case) is preserved
4 for the benefit of the estate. Further, any interest in property
5 preserved for the benefit of the estate under § 551 is
6 automatically brought into the estate under § 541(a)(4).

7 As to avoidable transfers under, for example, § 544, §547,
8 or § 548, there is a distinction to be made between avoidance and
9 recovery. "Congress dealt separately with the concepts of
10 avoidance and recovery in a number of ways." Eisen v. Allied
11 Bancshares Mortg. Corp. LLC (In re Priest), 268 B.R. 135, 138
12 (Bankr. N.D. Ohio 2000). Thus, "avoidance and recovery are
13 independent remedies," and a trustee is not required to seek
14 recovery under § 550 if avoidance is an adequate remedy. Id.;
15 see also Suhar v. Burns (In re Burns), 322 F.3d 421 (6th Cir.
16 2003) ["avoidance and recovery are distinct concepts and
17 processes."].

18 The trustee's position is that avoidance under § 548,
19 together with preservation under § 551 and § 541(a)(4), provides
20 an adequate remedy to the estate, and therefore, § 550 and its
21 remedies and restrictions, such as the statute of limitations in
22
23

24 4.(...continued)
25 avoided as, for example, a fraudulent transfer, the trustee may
26 recover the property transferred or, if the court so orders, the
27 value of the property, for the benefit of the estate. Under §
28 550(f), an action under § 550 must be brought within one year
after the avoidance of the transfer on account of which recovery
under § 550 is sought or the time the case is closed, whichever
is earlier.

1 § 550(f), are simply not in play here.⁵ She notes that
2 ordinarily, when a trustee has succeeded in avoiding a transfer,
3 "§ 551 provides the default remedy," with a trustee having the
4 discretion to seek an alternative remedy of recovery under § 550.
5 USAA Fed. Sav. Bank v. Thacker (In re Taylor), 599 F.3d 880, 890
6 (9th Cir. 2010), citing Rodriguez v. Daimlerchrysler Fin. Servs.
7 Am. LLC (In re Bremer), 408 B.R. 355, 359 (10th Cir. BAP 2009)
8 ("Preservation is automatic, while recovery is not. Recovery is
9 necessary only when the remedy of avoidance, and therefore of
10 preservation, is inadequate.").

11 There is a simpler answer; namely, that the trustee obtained
12 the relief available under § 550 at the same time as he avoided
13 the transfers, and there was no need for a further action under §
14 550. Specifically, in addition to avoiding the transfers by
15 which Gold and Carter as trustees of the Trust ended up with
16 title to the condo, the Judgment also provided that recovery of
17 all right, title, and interest in and to the condo held by
18 Lebbos, Gold, and Carter, in any capacity, is awarded to the
19 trustee, and the interest of the trustee is superior to any
20 interest of Lebbos, Gold, and Carter, and each of them, in the
21 condo.

22 In other words, by way of the Judgment, which has been
23 affirmed by the district court and the Ninth Circuit Court of
24

25 5. Courts have held that where avoidance is an adequate
26 remedy, the trustee is not required to pursue recovery under §
27 550, and the defenses afforded transferees under § 550(c) (non-
28 insider transferee) and § 550(e) (good faith transferee) are not
available. Burns, 322 F.3d at 429; Priest, 268 B.R. at 139 (§
550(e)); Roost v. Associates Home Equity Servs., Inc. (In re
Williams), 234 B.R. 801, 805 (Bankr. D. Or. 1999) (§ 550(c)).

1 Appeals and which is now final, the trustee accomplished both
2 avoidance and recovery, and there was no need for further action
3 on the part of the trustee to "recover" the "avoided" transfers.⁶
4 Thus, § 550(f) is irrelevant. As a result of the Judgment, the
5 effectiveness of which relates back to March 14, 2007, as seen in
6 the court's memorandum decision on the trustee's motion for
7 partial summary judgment, filed September 30, 2011, at the time
8 Gold and Carter signed and recorded the Quitclaim Deed, they had
9 no interest to convey, and at the time Giovanazzi signed and
10 recorded the Deed of Trust, he had no interest to convey.

11 D. Laches

12 Next, Giovanazzi cites the doctrine of laches, claiming the
13 trustee's alleged delay in bringing this action has "prejudiced
14 the defendants and the unsued owners in being able to bring their
15 witnesses, exhibits, and evidence to trial."^{7 8} He offers no
16 specifics.

17 "'Laches is an equitable doctrine.'" Beaty v. Selinger (In
18 re Beaty), 306 F.3d 914, 926 (9th Cir. 2002), quoting Brown v.
19 Continental Can Co., 765 F.2d 810, 814 (9th Cir. 1985). "'It is
20 hornbook law that one seeking equity must do equity,' and that
21 debtors who have 'unclean hands' may not invoke laches." Beaty,
22 306 F.3d at 925, citation omitted.

23
24 6. See Lippi v. City Bank, 955 F.2d 599, 605 (9th Cir.
25 1992) [it is customary practice to file a consolidated action to
avoid a transfer and to recover it or its value].

26 7. Motion to Dismiss Adversary Case, Declaration, Points
and Authorities, filed June 24, 2011 ("Motion"), 12:7-9.

27 8. By the term "unsued owners," Giovanazzi is referring to
28 the beneficiaries of the Trust, Aida Madeleine Lebbos, Cameron
Dacquila, and Brandon Dacquila.

1 Considering (1) the multiple motions and appeals prosecuted
2 by the defendants in Adv. No. 07-2006 and by Lebbos in her parent
3 case, all of which unnecessarily and unreasonably delayed the
4 trustee's administration of the case, and (2) Giovanazzi's role
5 as Lebbos' attorney in interjecting himself into the case in an
6 attempt to thwart the trustee's legitimate compromise of a
7 lawsuit that was unequivocally an asset of the estate, there is a
8 good deal of irony in Giovanazzi's invocation of the doctrine of
9 laches. Also significant are Giovanazzi's delaying tactics since
10 the Quitclaim Deed was recorded, including his refusal to
11 recognize the Judgment and its effect on his ability to encumber
12 and otherwise exercise control over the condo.

13 As the trustee points out, she waited until Lebbos, Gold,
14 and Carter had exhausted their appeals from the Judgment before
15 bringing this action. The delay resulting from the appeals is
16 attributable to them, not to the trustee. Giovanazzi, in turn,
17 is obviously not acting as a stranger to Lebbos, but as her agent
18 in perpetuating her ongoing attempts to prevent the trustee from
19 realizing on the value of the condo for the benefit of the
20 estate, and Lebbos' delays are thus attributable to Giovanazzi as
21 well. In short, Giovanazzi has failed to establish that the
22 trustee's delay in commencing this action reflects a lack of
23 diligence on her part or that he has suffered any prejudice as a
24 result of it, as required to establish this defense. Beaty, 306
25 F.3d at 926.

26 E. The Trustee's § 551 Cause of Action

27 Giovanazzi contends the complaint fails to state a cause of
28 action under § 551 for preservation of avoided transfers, because

1 (1) the condo is not property of the estate, (2) the owners⁹ of
2 the condo were never served with the complaint in Adv. No. 07-
3 2006, and (3) § 551 is to be used to preserve property against
4 persons who have already been subject to an avoidance action;
5 thus, the remedy would be against Lebbos, Gold, and Carter, not
6 Giovanazzi or the unsued owners.

7 First, "§ 551 automatically preserves the asset for the
8 estate." Heintz v. Carey (In re Heintz), 198 B.R. 581, 584 (9th
9 Cir. BAP 1996), emphasis added.

10 The legislative history stresses the automatic nature
11 of preservation under section 551. . . . This
12 represents a distinct change from former law which
13 required an adversary proceeding to "determine . . .
14 whether the transfer shall be avoided only or shall be
15 preserved for the benefit of the estate."

16 In re Van de Kamp's Dutch Bakeries, 908 F.2d 517, 519 (9th Cir.
17 1990). Thus, preservation of the avoided transfers occurred
18 automatically at the time the Judgment was entered; the trustee
19 now merely seeks a declaration confirming that fact, and it is
20 not relevant that Lebbos, Gold, and Carter are not parties to
21 this action.

22 Second, the condo is property of the estate, pursuant to §
23 541(a)(4), providing that property of the estate includes any
24 interest in property preserved for the benefit of the estate
25 under § 551.

26 Finally, the argument that the condo is owned by the Trust,
27 not Lebbos, and that the "owners" were not served with the
28 complaint was raised and determined in Adv. No. 07-2006. In

29 9. Here, again, it appears Giovanazzi refers to himself and
30 to Aida Madeleine Lebbos, Cameron Dacquila, and Brandon Dacquila.

1 particular, in opposition to the trustee's application for entry
 2 of default judgment, Lebbos presented 85 pages of exhibits and
 3 extensive argument supporting her position that the condo was
 4 paid for and owned by the Trust, the trustee filed opposition to
 5 that argument, and the court entered findings and conclusions on
 6 the record at the hearing.

7 The argument that the beneficiaries of the Trust, as the
 8 true owners, were indispensable parties who not served and thus
 9 had no opportunity to participate in the action was also raised
 10 and is precluded by the Judgment. Moreover, it is not accurate
 11 that a complaint commencing an action against a trust must be
 12 served on the beneficiaries of the trust. Instead, except where
 13 an action is between beneficiaries or between a beneficiary and
 14 the trustee, the trustee is the real party in interest and the
 15 proper party to bring or defend an action involving the trust.¹⁰
 16 Further, a beneficiary of a trust is considered to be in privity
 17 with the trustee and is bound by judgments in actions by or
 18 against the trustee, although the beneficiary was not a party.¹¹

19 F. Turnover

20 Citing the requirements of § 542(a), Giovanazzi contends the
 21 complaint does not state a claim for turnover because (1) the
 22 action is not brought "during the bankruptcy case," (2) the condo

23
 24 10. Cal. Code Civ. Proc., § 369(a)(2); Moeller v. Superior
Court, 16 Cal. 4th 1124, 1132, n.3 (1997); Greenspan v. LADT LLC,
 25 191 Cal. App. 4th 486, 522 (2010); Stoltenberg v. Newman, 179
 26 Cal. App. 4th 287, 293 (2009); Galdjie v. Darwish, 113 Cal. App.
 4th 1331, 1349 (2003); Milton H. Greene Archives, Inc. v. CMG
Worldwide, Inc., 568 F. Supp. 2d 1152, 1170-76 (C.D. Cal. 2008).

27 11. Carey v. United States, 2010 U.S. Dist. LEXIS 44882,
 28 *13-17 (E.D. Cal. 2010); Milton H. Greene Archives, Inc. v. CMG
Worldwide, Inc., supra, 568 F. Supp. 2d at 1170-76.

1 is not property the trustee may use, sell, or lease under § 363,
2 (3) Giovanazzi is not in possession, custody, or control of the
3 condo, (4) the condo is of inconsequential value or benefit to
4 the estate.

5 First, the contention that "there is no pending Bankruptcy
6 case due to the denial of discharge of the debtor" represents a
7 misunderstanding of bankruptcy law and process. That Lebbos has
8 been denied a discharge has nothing to do with the continuing
9 existence of the bankruptcy case or the bankruptcy estate. The
10 case remains open until it is closed by the court.

11 Next, Giovanazzi claims Lebbos "has never had any right to
12 use, lease, or sell the property,"¹² as it was paid for and has
13 always been owned by the unsued owners. Thus, under Giovanazzi's
14 reasoning, the condo is not property the trustee may use, sell,
15 or lease. As discussed above, these issues were determined in
16 the Judgment, which is final and binding; Giovanazzi may not
17 relitigate them here.

18 Giovanazzi also contends he does not have possession of the
19 condo; however, he plainly challenges the trustee's right to
20 possession and accuses her of interfering with his pending
21 eviction action (against the trustee's tenants). The trustee
22 alleges in her complaint that Giovanazzi has acted as though he
23 owns the property and has treated it as his own, that he
24 threatens to foreclose on the property based on the Deed of
25 Trust, and that he threatens her with other actions to prevent
26 her rightful efforts to sell or rent the condo. These

27
28 12. Motion, 16:23-24.

1 allegations, together with Giovanazzi's response admitting that
2 he asserts the right to possession, are sufficient to state a
3 claim for turnover. The trustee also seeks turnover of rents
4 alleged to have been improperly collected by Giovanazzi;
5 Giovanazzi has no response.

6 Giovanazzi's next contention -- that the condo is of
7 inconsequential value -- is based on his contention that the
8 amount of the Deed of Trust he executed in favor of the Trust
9 beneficiaries after the Judgment was entered exceeds the value of
10 the condo. However, by way of order and judgment on the
11 trustee's motion for partial summary judgment, filed September
12 30, 2011, the court has determined the Deed of Trust to be void
13 and of no force and effect. Finally, as a result of that order
14 and judgment, the trustee need not provide "adequate protection"
15 of the interests of the alleged "owners" of the property --
16 whether Giovanazzi or the Trust beneficiaries, as Giovanazzi
17 claims.

18 G. Property Out of the District

19 Citing Fed. R. Bankr. P. 7070 ("Rule 7070"), incorporating
20 Fed. R. Civ. Proc. 70 ("Rule 70"), Giovanazzi contends this court
21 has no jurisdiction to "change title" to the condo as it is
22 located out of this district. Rule 70(b) provides that if real
23 or personal property is within the district, the court may enter
24 a judgment divesting any party's title and vesting it in others.
25 However, Rule 7070

26 expands upon [this] sentence of Rule 70 by permitting a
27 judgment divesting title of any party and vesting title
28 in another whenever the subject real or personal
property is "within the jurisdiction of the court,"
instead of (as in Rule 70) "within the district."

1 Flinn v. Rains (In re Rains), 338 B.R. 99, 102 (Bankr. E.D. Cal.
2 2006). As this court has jurisdiction of property of the estate,
3 "wherever located," 28 U.S.C. § 1334(e)(1), Giovanazzi's argument
4 fails.

5 H. Remaining Claims

6 Finally, Giovanazzi reiterates arguments Lebbos has made
7 many times in this court and on appeal -- that she did not sign
8 the bankruptcy petition commencing her chapter 7 case, that she
9 never resided in this district, and that the court has and had no
10 jurisdiction over the "owners" of the property, such that the
11 Judgment is of no force or effect. On all of these issues, the
12 Judgment is final and binding.

13 III. CONCLUSION

14 For the reasons stated, the court concludes that each cause
15 of action of the trustee's complaint states a claim upon which
16 relief can be granted, and thus, Giovanazzi's motion will be
17 denied. The court will issue an appropriate order.

18 Dated: October 3, 2011

19 Robert S. Bardwil
20 ROBERT S. BARDWIL
21 United States Bankruptcy Judge
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